the evidence of Tang Seng Rhow. It is surely not a case where the Industrial Court had acted on no evidence or had come to a conclusion which on the evidence it could not reasonably come.

It is my considered view in the light of the authorities cited that assuming that there is any error of law in this matter it was made within jurisdiction, but I find there is in fact no such error of law. In the result I find that there was no excess or lack of jurisdiction when the Industrial Court made its award.

In the event *certiorari* is refused. The motion is dismissed. The respondent will have the taxed costs of these proceedings.

PUBLIC PROSECUTOR

v.

AMINAH BINTE ASGALI

HIGH COURT, TAWAU
TUAN IAN H.C. CHIN JC
[CRIMINAL TRIAL NO. 4 OF 1988]
22 JUNE 1993

DANGEROUS DRUGS: Charge under s. 39B(1)(a) Dangerous Drugs Act 1952 - Presumption of knowledge - Defence called - Whether presumption of knowledge rebutted - Whether defence had created doubt in prosecution's case.

The accused was charged with trafficking in 840 grammes of cannabis, an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 and punishable under s. 39B(2) of the same Act.

It was the case for the prosecution that, as a result of information received, a police party laid an ambush and apprehended the accused with a plastic bag which on examination contained a tyre tube which was filled with cannabis.

The accused was called to enter upon her defence and she claimed that she had been set up by a person called Inin who had left the tyre tube in her food stall telling her that he would return for it later. The question that arose was whether the accused had managed to rebut the presumption of trafficking in dangerous drugs.

Held:

[1] The evidence of the accused that one Inin had placed the cannabis in her stall and that she was caught holding the cannabis when she was about to return the same to Inin who came to collect it with another person who later arrested her was accepted. In the circumstances the accused's evidence that she had no knowledge that there was cannabis hidden inside the tyre tube was accepted and the accused had managed to rebut the presumption of trafficking.

[2] It could not be concluded that the accused was not worthy of credit because of contradictions in her evidence. Contradictions and discrepancies are to be expected when the passage of time, from the time of the event to the date of the trial, is long, as in this case.

[Accused acquitted and discharged].

Legislation referred to:
Dangerous Drugs Act 1952, ss. 2, 39B(1)(a), (2)

For the public prosecutor - Mazelan Jamaluddin, DPP
For the Accused - Datu Nasrun bin Datu Mansur

JUDGMENT

Ian H.C. Chin JC:

The Charge

Aminah Bte Asgali ("the accused") is charged with trafficking in 840 grammes of cannabis on 3 June 1987 at about 9.00 a.m. on a bridge at Kg. Bangau Bangau, in the District of Semporna, Sabah; an offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952, and punishable with death under s. 39B(2) of the same Act. The prosecution called seven witnesses and closed its case on 14 June 1993. The defence was called and the Accused gave evidence on oath on 15 June 1993 and the defence on that day closed its case. I will first reproduce a summary of the evidence of the prosecution together with the remarks I made, which I had set out when I ruled that there was a case for the Accused to answer.

Prosecution Evidence

The prosecution case is that one detective corporal Sukup Lamudin ("PW6") at about 4.00 p.m. on 2 June 1987 received information that a woman would be selling cannabis on a catwalk in Kg. Bangau Bangau, Semporna, at between 8.30 a.m. and 9.00 a.m. on 3 June 1987. PW6 on the same day at about 9.00 p.m. related the information to one Inspector Ratan Kumar Singh ("PW3") but PW3 testified that PW6 said the information was that the selling of cannabis would take place between 8.00 a.m. and 9.00 a.m. PW3, according to one corporal Madsarapi Hj. Mahjalan ("PW7"), on 3 June 1987, told PW7 that the information said the selling would take place between 8.30 a.m. and 9.00 a.m. PW3 after being informed by PW6 of the said information instructed PW6 to meet him at his office the next morning at 8.00 a.m. PW6 reported to PW3 as instructed and he also got ready a van with the informer inside. PW7 was then summoned and the three of them then, at about 8.30 a.m., went inside the van where the informer was waiting and the four of them then proceeded to Kg. Bangau Bangau arriving there at about 8.40 a.m. I will pause here to remark that the information did say the sale of cannabis could happen as early as 8.00 a.m. and yet the police party did not bother to arrive at the place of ambush before the said times but only at 8.40 a.m. (or 8.45 a.m., according to PW3). It seems that it matters not that the police party did not turn up earlier because, miraculously it seems, the Accused only appeared on the catwalk at 9.00 a.m. carrying a plastic bag that contained the cannabis; appearing only at that time and not before the police party had arrived. After the Accused was pointed out by the informer, PW7 got down followed by PW6. PW7 then approached the Accused and held her hands while PW6 hancuffed the Accused. It was during the process of holding the hands of the Accused that the plastic bag containing a tyre tube with cannabis inside fell into the water under the catwalk. PW6 retrieved the plastic bag from the water by using a piece of wood. PW3 then arrived and took possession of the said plastic bag and cannabis which cannabis was hidden inside a tyre tube. PW3 weighed the cannabis (which were wrapped inside 11 plastic wrappers) together with the plastic bag and found the weight to be about 1,000 grammes. The chemist Khalid Safan ("PW1") in his evidence said he found the weight of the cannabis to be 840 grammes and the 11 plastic wrappers to weigh 57.1 grammes giving a total of 897.1 grammes. As for the custody of the cannabis there is no question of any break in the chain of evidence and I will not dwell on that. Suffice to say here that the custody of the cannabis was properly accounted for from the time it was retrieved from the water to the time it was produced in Court.

PW1 in his evidence said that when he examined the vegetable matter under the microscope he found "an abundant amount of sticky resins on the dried vegetable matter". He also testified that from an examination of the vegetable matter he found no evidence of any extraction of resin from the vegetable matter as the signs usually associated with manual or chemical extraction of resin are not present. He therefore found the vegetable matter to be cannabis within the meaning of s. 2 of the Dangerous Drugs Act 1952.

Accused Evidence

On the day she was arrested, the Accused was at the side of a catwalk tending her food stall

when a man called Inin came to see her and asked her to keep a plastic bag for him. Inin told her there was a rubber inside the plastic bag. Inin said he had to go to a school for a short while and will return to take the plastic bag. She placed the plastic bag on the floor in the stall. She did not know what was inside the plastic bag. It was usual for people to leave things with her to be kept in the stall. Inin came back an hour later with another person and asked for the return of his plastic bag. It was while she was handing the plastic bag to Inin that the person with Inin held her while Inin ran away. The bag fell into the water below the catwalk. She was arrested and taken to the police station. That, in brief, was the evidence of the Accused. The other details of her evidence are, where necessary, set out hereinafter. I will now proceed to consider whether the presumption of knowledge had been rebutted or whether any doubt has been created in the case of the prosecution. My finding on this issue of knowledge will dispose of the case.

Conclusions

I will deal with the issue of whether the Accused had rebutted the presumption that the accused knew there was cannabis inside the tyre tube that was placed in a plastic bag which she was caught holding on 3 June 1987 at about 9.00 a.m. at Kg. Bangau Bangau, Semporna. I will have to repeat some of the evidence of the Accused which I had earlier set out, with elaborations, to make for better understanding of the reasons for my conclusions. It is the defence of the Accused that she had no knowledge what was inside the tyre tube which was in the plastic bag. The Accused testified that the plastic bag containing the tyre tube was kept in her stall by a person called Inin who said he will return to collect the same. The Accused sold food at a stall by the catwalk which was situated just a couple of feet away from the spot where the prosecution alleged she was arrested. She lived further down the catwalk. She testified that it was usual for people to keep things in her stall. Inin returned one hour later with a man. Inin asked for the plastic bag containing the tyre tube and just as she was handing the plastic bag to Inin, the person who was with Inin held her hands and handcuffed her while Inin ran away. She said she was arrested while in the stall which had no walls. It was while she was being arrested that the plastic bag fell into the water. This is the proper stage for me to recap the relevant part of the prosecution evidence to see how they measure up to the evidence of the Accused. There is no dispute that the Accused was caught in manual possession of the plastic bag containing the tyre tube which had cannabis hidden inside. The prosecution case is that there was information that the Accused would be selling cannabis whereas the defence case is that the accused was setup. It will be recalled that PW6 had said the informer had told him that a woman would on 3 June 1987 be selling cannabis between 8.30 a.m. and 9.00 a.m. It goes without saying that in order to catch the woman and the buyer, the police must be in position by 8.30 a.m., if not well before that time, since the sale could very well take place at 8.30 a.m., so as to nab both the seller and the buyer. But the police party did not bother to be at the place of ambush until 8.40 a.m. or 8.45 a.m. and the prosecution witnesses did not explain why. We are left to consider the possibilities. One possible explanation is that someone in the police party, which included the informer, was to induce (by pretending to buy) when exactly the Accused could be caught holding the cannabis and hence, there was no hurry go get to their position of ambush. As long as the person who can induce the said event was not with the Accused there was no question of the Accused handling the cannabis or disposing of it before that time. It will be recalled that the information said that there will be a sale of cannabis which necessarily involves a seller and a buyer. The seller was supposed to be the Accused. Who then was the supposed buyer? Since the police party and the informer did not bother to get to the place of ambush until 8.40 a.m. (or 8.45 a.m., depending on which prosecution witnesses evidence is preferred) despite the possibility of the sale taking place at 8.30 a.,m., the buyer could very well be someone from the police party which included the informer. This buyer could at any time bring about the Accused handling of the plastic bag. There was therefore no fear of the sale of the cannabis taking place in the absence of the ambush party because, probably, the buyer was in the police party. This is one of the probable reasons, and the most plausible, why the police party and the informer did not bother to get to the place of ambush until 8.40 a.m.; the sale

could only take place if the buyer was there and the buyer could be from the police party and hence it did not matter when the police party arrived because the sale could only take place after the police party had arrived as the buyer was in the police party. No reason was given as to why the police did not wait for the alleged buyer to turn up before they moved in to arrest the Accused immediately upon seeing the Accused. This lends support to the possibility that the buyer was in the police party. Support for this conclusion can also be found in the evidence relating to the events before the police party set off from the police station to the place of ambush. It was PW6 who had at 4.00 p.m. on 2 June 1987 received information about the sale of cannabis. At 9.00 p.m. that night he apprised his superior officer PW3 of the information. According to the evidence, all that PW3 did was to tell PW6 to meet him the next morning in his office at 8.00 a.m. The next day, PW6 met PW3 but he, apparently on his own initiative, also brought along a van and the informer. The informer and PW6 must have got together well before 8.00 a.m. since they were already at the Semporna police district headquarters by 8.00 a.m. No explanation was given as to why PW6 got hold of the van and the informer without being told to do so by PW3. There was, therefore, an opportunity and the possibility exists, for the informer to have gone to the Accused's stall to hand the Accused the plastic bag containing the tube and the cannabis for the purpose of setting-up the Accused before he turned up at the police district headquarters at 8.00 a.m. and thereafter went with the police to ask for the plastic bag, and thus cause the Accused to be caught with the cannabis. This is probable because, as earlier stated, no police party would organise themselves to arrive at a place of ambush after the expected time of the commission of the offence. Another factor which throws a doubt in the prosecution case is this - PW3 appeared to distance himself from taking charge in this case. Apart from not initiating the procurement of the van and the informer, he was also not the one who gave instructions to the informer as to the manner of indicating when the informer had the Accused in sight; instead, PW6 instructed the informer. PW3 also walked way behind PW7; something not to be expected when he was supposed to be in charge of the police party and the most senior police officer of the party. When PW7 allegedly introduced himself to the Accused, PW6 said he (PW6) was 25 feet away and PW3, who was behind PW6, was even further away. PW3 had, therefore, also literally distanced himself from what was happening. As to what happened to the informer, there is no evidence as to when the informer should disappear and PW3, PW6 and PW7 said nothing of that sort. All PW3 and PW7 said was that when they returned to the van after the arrest of the Accused, the informer had disappeared. When the evidence of the prosecution are examined in the manner I had just done, I cannot say that there could not be any truth in what the Accused said about a man called Inin placing the plastic bag with her and thereafter came calling with a policeman for the said plastic bag and had her arrested. That she was set up by Inin and this Inin was probably the informer could probably be true. It is, therefore, probably true that the Accused did not know that there was cannabis in the plastic bag. This is even more probable when one takes into account the fact that the cannabis was hidden inside the tyre tube.

What then of the fact that it was put by the defence to PW7 that the arrest was in front of the stall and the Accused also said so in her evidence in chief, but, when she was cross-examined, she said she was inside the stall when she was arrested. The learned DPP did not take issue on this in his final address to the Court. The event giving rise to the charge herein occurred more than 6 years ago. Quite naturally, discrepancies are expected; what more, when the prosecution witnesses with the aid of investigation papers also contradicted each other and themselves in their evidence. Take for instance, PW7's evidence. He in one breadth said that at the first moment he saw the Accused, after she was pointed out by the informer, the Accused was just standing on the catwalk but later said, when further cross-examined, that he saw the Accused walking from the direction of a house. Therefore, I cannot in this case conclude that the Accused is not worthy of credit because of the contradiction in her said evidence. Contradictions and discrepancies are to be expected when the passage of time, from the time of the event to the date of the trial, is long as in this case.

Given what I have said, I accept the evidence of the Accused that one Inin had placed the cannabis (which was hidden in a tyre tube) in her stall and that she was caught holding the cannabis when she was about to return the same to Inin who came to collect the same with another person who later arrested her. I also accept her evidence that she did not know that there was cannabis hidden inside the tyre tube. Even if I am not justified in preferring the version of the Accused as to what happened that day, her version, for the reasons which I have earlier set out, nevertheless, creates a doubt as to whether she knew the plastic bag contained cannabis. I therefore discharge and acquit the Accused. The cannabis is to be destroyed after the disposal of the appeal herein or after the time limited for appeal, whichever is later, by burning in the compound of the Court and to be witnessed by the Senior Assistant Registrar of the High Court in Borneo at Tawau.

PUBLIC PROSECUTOR

v.

CHIA AH YU

HIGH COURT, ALOR SETAR
TUAN MOHD. NOOR BIN HJ. ABDULLAH JC
[CRIMINAL TRIAL NO. 47-4-90]
9 JUNE 1993

DANGEROUS DRUGS: Charge of trafficking in opium - Statutory presumptions raised against accused - Whether evidence of accused had rebutted presumptions raised.

EVIDENCE: Evidence given by accused contradictory to contents of cautioned statement - Cautioned statement not tendered in evidence - Whether cautioned statement could be used to impeach credit of accused.

The accused was charged with trafficking in dangerous drugs, namely raw opium, in contravention of s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act). The accused was stopped while riding a motorcycle with a black bag between his legs. The bag was found to contain two packages which upon examination were found to contain raw opium with a combined net weight of 3720.1 grammes.

The accused claimed that he had borrowed the motorcycle from a co-worker and that when he was about to use it he noticed the black bag on the carrier of the motorcycle. He claimed that he did not examine the bag and that he rode on the motorcycle with the black bag intact. The accused said that he had used the motorcycle before, others likewise and the owner of the motorcycle so admitted. The question that arose was whether the accused's evidence was capable of rebutting the statutory presumptions of trafficking and knowledge that had been raised against him.

In the course of the accused's evidence the prosecution sought to impeach the credit of the accused by using the cautioned statement made by the accused which statement was not produced by the prosecution nor the defence during the case for the prosecution.

Held:

[1] The prosecution was entitled to use the cautioned statement in cross-examination and for the purpose of impeaching the credit of the accused for otherwise the clause "and, if such